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ABSTRACT

This booklet is intended as the nongovernmental organization's (NGO's) contribution to the celebration of the 50th anniversary of the European Convention on Human Rights (ECHR). Its aim is to bear witness to the commitment of the NGOs having consultative status with the Council of Europe, and to all that they have done to make known, put into practice, and develop the definitions and guarantees of human rights offered by the Convention. The booklet is divided into two parts. Part 1 contains: "Introduction"; "The Council of Europe and Human Rights"; "The Council of Europe and Non-Governmental Organisations (NGOs)"; "The Council of Europe and the European Convention on Human Rights"; "The European Court of Human Rights"; "Other Human Rights Instruments"; "Intergovernmental Activities in the Field of Human Rights"; "The Steering Committee for Equality between Women and Men"; "The Results of Fifty Years' Functioning of the Convention"; "The Human Rights Commissioner"; "Education and Information about the Convention"; "Action Taken by the NGOs Granted Consultative Status"; "Procedure Governing Individual Applications to the European Court of Human Rights"; and "Rene Cassin One of the Leading Figures behind the Convention." Part 2 contains: "Overview of Some of the Main Articles of the Convention"; and "Conclusion." Contains list of Web sites, addresses, abbreviations, and map of the member states of the Council of Europe. (BT)

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50 YEARS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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Foreword

This publication is intended as the NGOs' contribution to the celebration of the 50th anniversary of the European Convention on Human Rights (ECHR). Its aim is to bear witness to the commitment of the NGOs having consultative status with the Council of Europe, to all that they have done – and continue to do – to make known, put into practice and develop the definitions and guarantees of human rights offered by the Convention.

Readers of this text, which is the fruit of many meetings of the Human Rights NGOs, both in small groups and on a larger scale, will doubtless be struck by its diversity and complementarity. The drafting work itself was entrusted to a team of about ten people, who spent a year writing, reviewing and correcting the different contributions. The authors of this publication hope that it will be useful to the NGOs themselves and to a wider readership.

Anne-Cécile Antoni (IFACAT), Louis Bloch (CCJO), Pierre Boulay (FIDH), Alexandre Marius Dées de Stério (IHEU), Guiseppe Guarneri (IIHL), Kathy Kaaf (Soroptimist International), who co-ordinated the editing work, Jean-Louis Masuy (WCT), Gabriel Nissim (UNDA) and Claude VercoutËre (FICEMEA) – advised and assisted by other NGO representatives – wish, lastly, to thank the Council of Europe as a whole, and above all the Directorate General of Human Rights, for the constant interest they have shown in this publication, without which it would never have seen the light of day.

Strasbourg, September 2000

This publication has been prepared with the financial support of the Council of Europe.

The opinions expressed in this publication are those of the authors and do not engage the responsibility of the Council of Europe. They should not be regarded as placing on the legal instruments mentioned in it any official interpretation capable of binding the governments of member states, the Council of Europe's statutary organs or any organ set up by virtue of the European Convention on Human Rights.

Fifty Years of the European Convention on Human Rights

	Page
PART ONE	
Introduction	3
The Council of Europe and Human Rights	4
History of the Council of Europe	4
Principles and conditions of accession	4
Objectives	5
Bodies	5
- Committee of Ministers	5
- Parliamentary Assembly	5
- Congress of Local and Regional Authorities of Europe	6
- Secretariat	6
The Council of Europe and Non-Governmental Organisations (NGOs)	7
The Council of Europe and the European Convention on Human Rights	8
The European Court of Human Rights	8
Other human rights instruments	9
European Social Charter	9
European Convention for the Prevention of Torture	10
Framework Convention for the Protection of National Minorities	11
Control mechanisms	11
The European Commission against Racism and Intolerance (ECRI)	11
Intergovernmental activities in the field of human rights	11
The Steering Committee for Equality between Women and Men	12
The results of fifty years' functioning of the Convention	13
Political impact	13
Legal impact	13
Strengthening the Convention system	13
Preserving the body of Convention law	14
Extending the rights guaranteed	14
Procedural improvements	14
The Human Rights Commissioner	14
Education and information about the Convention	14
Action taken by the NGOs granted consultative status	15
Procedure governing individual applications to the European Court of Human Rights	18
René Cassin – one of the leading figures behind the Convention	19
PART TWO	
Overview of some of the main articles of the Convention	
Art. 2 The right to life – Abolition of the death penalty	21
Art. 3 Prohibition of torture	22
Art. 5 : The right to liberty and security	24
Art. 6 : The right to a fair trial	25
Art. 8 The right to respect for private and family lifee	26
Art. 9 Freedom of thought, conscience and religion	27
Art. 10 Freedom of expression	28
Art. 11 Freedom of assembly and of association	29
Art. 14 Ban on discrimination	31
Conclusion	33
Council of Europe and NGO websites	back cover
Addresses	back cover
Abbreviations	back cover
Map of the member states of the Council of Europe	10

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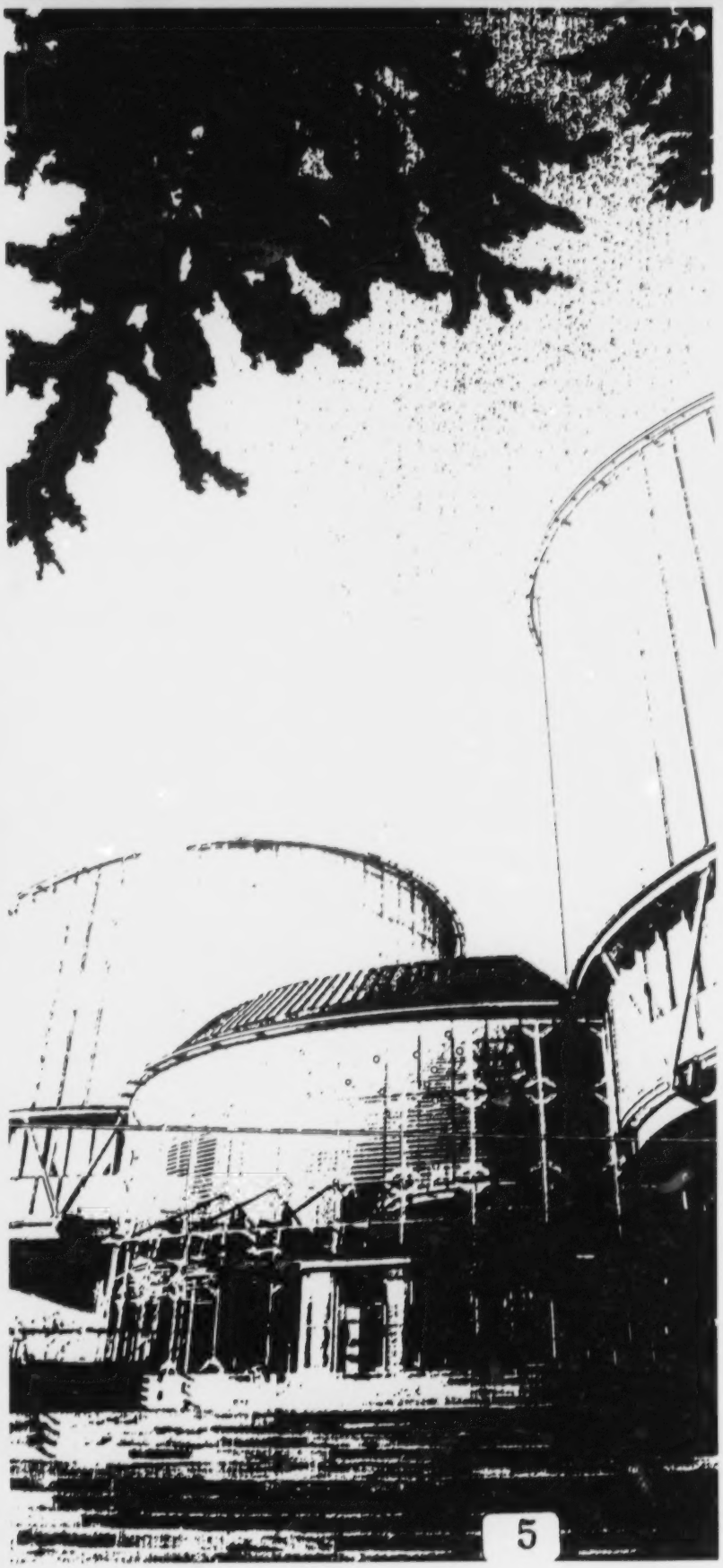

Introduction

The term **human rights** generally brings to mind the struggle of humankind over the centuries to rid itself of arbitrary rule and assert its need for freedom. For French-speakers the term is synonymous with the **French Revolution and the Declaration of the Rights of Man and of the Citizen (1789)**. For English-speakers it evokes **Magna Carta (1215)**, the **Bill of Rights (1689)**, **Habeas Corpus (1679)** in England, and the **American Declaration of Independence (1776)** in the New World.

The American Declaration of Independence states *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men Ö."* **The French Declaration of the Rights of Man and of the Citizen of 1789** reads *"Men are born and remain free and equal in rights... . Liberty consists in the freedom to do everything that injures no one else... . no one may be forced to do anything not provided for by law."* It recognises freedom of opinion, conscience and thought, freedom of the press, the right to property, the right to security of person and the right to resist oppression. It is these rights and freedoms which are the foundations of the modern democratic state. After the Second World War the community of nations undertook to make human rights a common ideal for humanity. This ideal was enshrined in the Charter of the United Nations, adopted in 1945, and in the **Universal Declaration of Human Rights**, which proclaimed the universality and indivisibility of human rights.

The European Convention on Human Rights of 1950 was the Council of Europe's first treaty and is its greatest achievement. The Convention makes express reference to the Universal Declaration of Human Rights proclaimed by the United Nations, but is broader in scope since it includes a monitoring system. It has both a **political and a legal** dimension:

- its **political** dimension lies in the fact that it is the common denominator of the European democracies and serves as a standard for accession to the Council of Europe;
- its **legal** dimension consists in the guarantee that it affords of international judicial protection of human rights, based on clear definitions of the rights concerned and on supervisory machinery.

The European Court of Human Rights in Strasbourg deals with complaints of breaches of the Convention lodged either by states parties against other signatory states or by individual applicants, whatever their nationality, who deem themselves to be the victim of a violation of Convention rights by a signatory state. However, before bringing their case before the Court, applicants must first have exhausted all the legal remedies available in the country concerned.

Nevertheless, fifty years after the drafting of the Convention there are still violations of human rights – some prime examples are to be found in former Yugoslavia and Chechnya showing that much remains to be done.

European Court of Human Rights, Strasbourg

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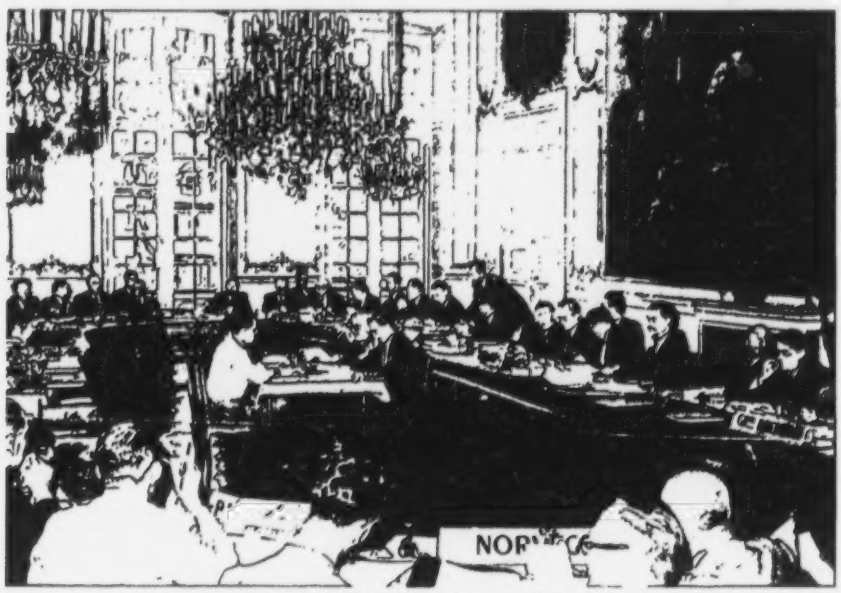
The history of the Council of Europe

The Council of Europe was Europe's first intergovernmental organisation established in the aftermath of the Second World War – a fact of which many people are unaware. The objective was to make states work together in order to avoid future conflicts. In 1949 ten countries – Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom – signed the treaty setting up the Council of Europe. Since its foundation the organisation has had its seat in Strasbourg. It has two official languages – English and French. Today, with **41 member states** (see the map on p. 10), the Council covers virtually all of Europe. This pan-European organisation is a forum for discussion of the concerns and desires, the doubts and the hopes of almost 800 million people in an area extending from the shores of the Atlantic to the far-eastern border of Russia.



First session of the Committee of Ministers at the City Hall, Strasbourg, 1949

Principles and conditions of accession

Any European state may become a member of the Council of Europe on condition that it undertakes to safeguard the dignity of its citizens by upholding their **fundamental rights** and adhering to **ethical values**. The aim of the Council of Europe is to achieve greater unity among its members. States acceding to the organisation's statute commit themselves to acknowledge the principles of:

- the rule of law
- human rights
- and pluralist democracy.

Moreover, the statute expressly provides that a member state which ceases to comply with these principles and obligations may be excluded from the organisation.

Objectives

The Council of Europe aims to heighten awareness of and enhance the cultural identity of Europe in all its diversity.
It seeks to help find solutions to some of the key problems of our era:

- racism, discrimination against minorities
- social exclusion
- organised crime, corruption
- trafficking in human beings, violence
- drug abuse, and the scourges of AIDS, malaria and cancer
- bioethics and the issue of cloning
- protection of the environment.

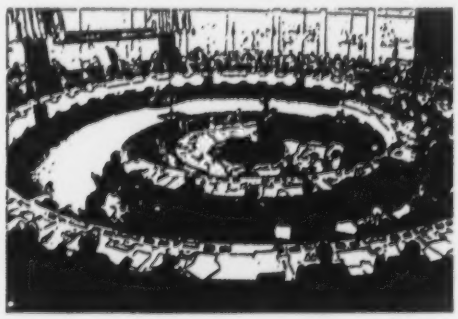
It also seeks to promote democratic stability in Europe by supporting political, legislative and constitutional reforms.

Bodies

The Council of Europe is organised around:

- the Committee of Ministers
- the Parliamentary Assembly
- the Congress of Local and Regional Authorities of Europe
- and a secretariat.

A member of the Parliamentary Assembly



The Committee of Ministers

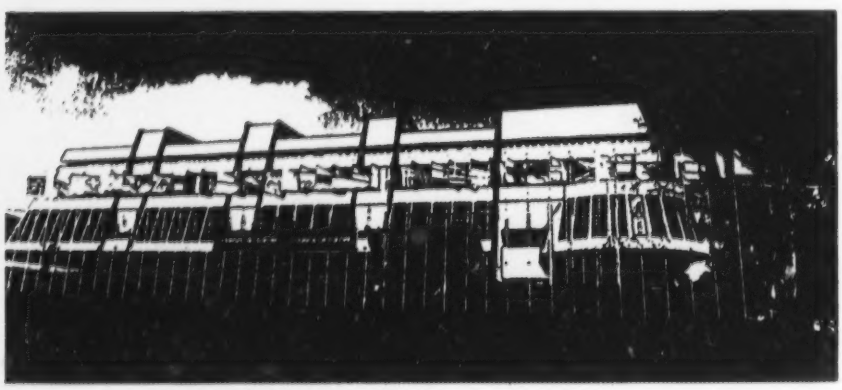
The Committee of Ministers, consisting of the member states' foreign ministers or their permanent representatives, is the organisation's decision-making and executive body. It has authority to conclude conventions and agreements, which are binding on ratifying states. It adopts recommendations, resolutions and declarations. Its tasks include monitoring member states' honouring of their commitments and supervising the execution of judgments of the European Court of Human Rights.

The Parliamentary Assembly is a forum with some 600 members – 300 representatives and their substitutes – elected or appointed from among the members of the national parliaments. Each national delegation has between two and eighteen members, representing the main political forces in their country. 85% of these parliamentarians are men and 15% women.

The Assembly meets in Strasbourg four times a year. Each of these *"part-sessions"* lasts one week. The Assembly sets its own order of business, covering topical subjects and themes of relevance to future European and international policy. Its main political role is to give the Council of Europe a truly democratic dimension.

The Assembly's **debates** and adopted **texts** provide important **pointers** for the activities of the Committee of Ministers. The members of the Assembly communicate its texts to their respective parliaments. They thus exert an influence on the national governments, which is of crucial importance, in particular to the efforts to bring the countries of central and eastern Europe into the fold of the European democracies. The Assembly's initiatives often result in the conclusion of treaties, known as *"European conventions"*, which form the basis of a genuine body of European law, aimed at harmonising national judicial practices and bringing them into line with Council of Europe standards.

The Committee of Ministers and the Parliamentary Assembly may sometimes differ in their reaction to a given event, as was the case with the conflict in Chechnya. The Assembly imposed sanctions on Russia by depriving the members of its national delegation of their voting rights. It also asked the Committee of Ministers to initiate the procedure to suspend Russia, if that country failed to show that immediate, demonstrable progress was being made. The Committee of Ministers confined itself to making a declaration, in terms which the Assembly considered to be too weak and too complacent.



The Council of Europe, Strasbourg

The Congress of Local and Regional Authorities of Europe is a semi-parliamentary body. It represents some 200,000 local and regional authorities. Its main functions are to promote grassroots democracy and strengthen transfrontier and inter-regional co-operation in Greater Europe.

These bodies are assisted by a secretariat of 1,300 European civil servants, nationals of the 41 member states. The secretariat is headed by a **Secretary General**. The current incumbent is the Austrian **Walter Schwimmer**, whose term of office expires in 2004.

The Council of Europe is financed by the governments of the member states in proportion to their population and respective wealth. For the year 2000 its **budget** amounts to **Euro 227 million**.

Daniel Zielinski, President of the NGOs' Liaison Committee

The NGOs' Liaison Committee

Over **400 NGOs have consultative status** with the Council of Europe. To be granted this status, which was created in 1952, an organisation must be international, particularly representative in its field of competence, and make known the work of the Council of Europe among the European public and contribute to the organisation's activities. A **Liaison Committee**, composed of 25 elected members, acts as representative of the NGOs as a whole. After the fall of the Berlin Wall in 1989, NGOs played an important role in the development of civil society in the countries of central and eastern Europe undergoing the transition to democracy. NGOs may submit opinions – written or oral – to the committees of the Assembly. A number of these committees maintain close contacts with certain NGOs having specific capabilities and experience.

In the field of human rights the Council of Europe needs to be able to co-operate with active NGOs, above all so as to spread knowledge of human rights standards and mechanisms, but also to increase public awareness and understanding of these rights. Three NGOs – Amnesty International, the International Commission of Jurists and the International Federation of Human Rights Leagues – have been granted special observer status with the Steering Committee for Human Rights (CDDH), the intergovernmental co-operation body established by the Committee of Ministers to implement its human rights policy. This status allows these three NGOs to make oral and written contributions to the CDDH's discussions concerning new human rights standards and procedures.

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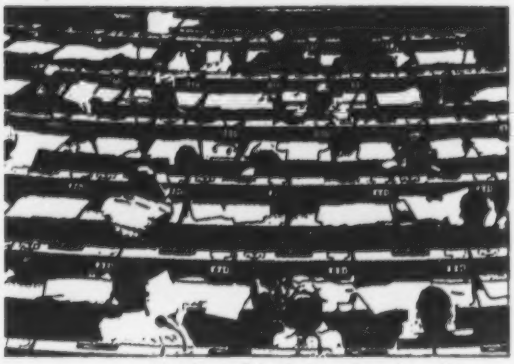
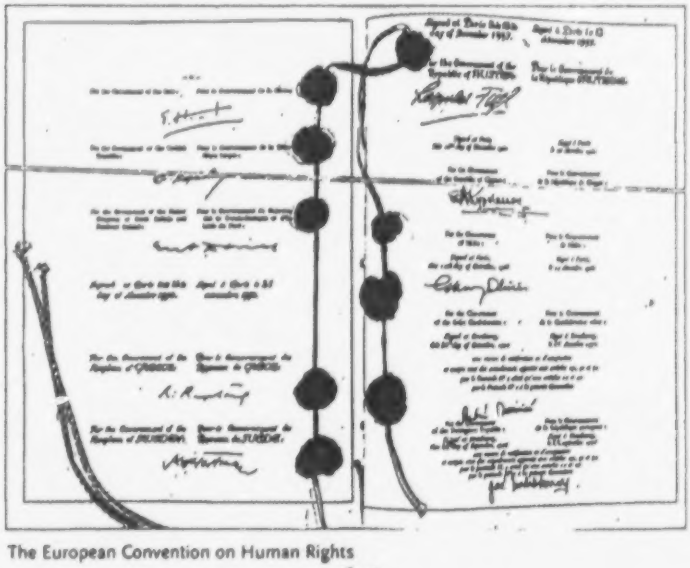
The Council of Europe and the European Convention on Human Rights (ECHR)



Members of the Parliamentary Assembly

Since its foundation the Council of Europe has drawn up **over 170 conventions**. These aim to harmonise judicial practice in the member states and are binding on states which have ratified them. The first instrument of this kind devised by the Council of Europe was the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, which was signed in Rome in 1950. This international treaty is of unparalleled importance. It goes beyond the principle of non-interference in the internal affairs of sovereign states by requiring the signatory states to secure certain rights and freedoms to everyone in their jurisdiction. The Convention defines these universal rights and freedoms, which are inalienable, indissociable and interdependent, whether civil, political, economic, social or cultural in nature. The Convention goes much further than the United Nations' Universal Declaration of Human Rights, since its authors did not confine themselves to merely drawing up a list of rights but, at the European regional level, transformed the principles asserted in the Universal Declaration into tangible legal obligations. To this end, they established an international supervisory and protective system. All individuals deeming themselves to have been the victim of a violation of the rights secured in the Convention may lodge a complaint with the European Court of Human Rights in Strasbourg, after exhausting the legal remedies available in their own country.



The European Convention on Human Rights

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The European Court of Human Rights

Protocol No. 11 to the Convention, which came into force in 1998, replaced the former supervisory mechanism with a single, permanent Court of Human Rights. Individual applicants have direct access to this new Court, and its jurisdiction is automatically compulsory for Convention Contracting States. The Court functions on a permanent basis. It deals with all the preliminary stages in proceedings and delivers judgments. The Court is composed of a number of judges equal to that of the Contracting States. They are chosen from lists of candidates put forward by the national governments. The selection procedure is closely monitored by the Committee of Ministers, but it is the Parliamentary Assembly which elects the judges. They sit in an individual capacity and do not represent the state which proposed them. The number of individual petitions to the Court rose from 404 in 1981 to 2,037 in 1993 and, following the accession of new member states, to 4,750 in 1997 and 8,396 in 1999.

Other human rights instruments

The Council of Europe has a number of other conventions for the protection of human rights. The most important of these are:

- **the European Social Charter** (1961)
- **the European Convention for the Prevention of Torture** (1987)
- **the Framework Convention for the Protection of National Minorities** (1994).

The European Social Charter complements the European Convention on Human Rights. The Charter and the additional protocol of 1988 guarantee a series of fundamental social and economic rights, a minimum number of which must be accepted by the signatory states. These rights include:

- non-discrimination in employment matters,
- the right of association and the right to collective bargaining,
- equal treatment for migrant workers
- the right to social security
- children's and adolescents' right to protection
- the right to protection and assistance for migrant workers and their families.

In 1996 the **European Social Charter** was revised, to adapt certain basic provisions to fundamental changes in society such as:

- increased gender equality
- the strengthening of the social, legal and economic rights of children and adolescents
- the right to social support in the event of dismissal
- the right to decent housing.

An additional protocol, adopted in 1995, provides for a system of **collective complaints**, which may be lodged by certain NGOs and employee and employer organisations.

The 41 states of the Council of Europe

Albania • Andorra • Austria • Belgium • Bulgaria • Croatia • Cyprus • Czech Republic • Denmark • Estonia • Finland • France • Georgia • Germany • Greece • Hungary • Iceland • Ireland • Italy • Latvia • Liechtenstein • Lithuania • Luxemburg • Malta • Moldova • Netherlands • Norway • Poland • Portugal • Romania • Russia • San Marino • Slovakia • Slovenia • Spain • Sweden • Switzerland • "the former Yugoslav Republic of Macedonia" • Turkey • Ukraine • United Kingdom •

The idea behind the 1987 **European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment** is to prevent ill-treatment of persons deprived of their liberty. The Convention establishes non-judicial preventive machinery to protect detainees, based on a system of visits by a committee of independent experts to places of detention, such as prisons, young offender institutions, police stations, army barracks, psychiatric hospitals and centres for the detention of asylum-seekers. The purpose of these visits is to see how detainees are treated and, if necessary, recommend improvements.

The Framework Convention for the Protection of National Minorities of 1994 sets forth principles which signatory states are required to respect in a spirit of tolerance, founded on the idea of diversity as a source of mutual enrichment. The convention prohibits forced assimilation. It contains programme-type provisions aimed at preserving and developing minority cultures, religions, languages and traditions.

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Control mechanisms

Unlike the ECHR, the other conventions provide for supervision and control systems – usually referred to as "**monitoring**" – that are not judicial in nature. The Convention for the Prevention of Torture makes provision for a system of visits by a committee of independent, international experts. Under the Social Charter and the Framework Convention for the Protection of National Minorities, committees of experts play a key role in assessing contracting states' implementation of the provisions and honouring of their commitments on the basis of a reporting system. Ultimately, it is the Committee of Ministers that makes the relevant recommendations to the states concerned.

The European Commission against Racism and Intolerance (ECRI) was set up at the first Council of Europe summit, held in Vienna in 1993. It strives to strengthen legal and political safeguards against all forms of racism, xenophobia, anti-Semitism and intolerance. It assesses the effectiveness of the national and international measures already in force, strengthens these measures where necessary and promotes preventive action and awareness-raising at local, national and European levels.

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Intergovernmental activities in the field of human rights

The European Convention on Human Rights is a living instrument, which has managed to keep pace with changes in European society. This dynamism can be seen in the case-law of the Court and the former European Commission of Human Rights. But it is also the result of ongoing intergovernmental activities, which have led to the adoption of a number of protocols. Some of these have extended the scope of the Convention to new rights. Others have introduced improvements in the supervisory mechanism, as is the case with Protocol No. 12, adopted by the Committee of Ministers on 26 June 2000, which will be opened for signature by states parties on the occasion of the celebration of the Convention's 50th anniversary in Rome on 4 November 2000. Protocol No. 12 focuses on enlarging the scope of Article 14, which bans discrimination.

States are today confronted with a growing number of **new challenges** and **needs**, raising human rights issues: racism and xenophobia, social exclusion of the underprivileged and minorities, violence and terrorism, the need for genuine equality between women and men, the consequences of scientific and technical progress, in particular in the fields of medicine, biology, information and communication. The Committee of Ministers mandates **committees of intergovernmental experts** to carry out the **preparatory work on conventions, recommendations, resolutions and declarations** on all these subjects.

The Steering Committee for Equality between Women and Men (CDEG)

Although the right to **gender equality** is not written, as such, in the European Convention on Human Rights, a vast range of activities on this subject is implemented under the aegis of the CDEG.

This committee deals with issues such as:

- sex discrimination
- balanced representation of women and men in decision-making in the political and public arenas
- violence against women
- trafficking in women and prostitution
- rape in armed conflicts
- gender mainstreaming.

The CDEG has held a large number of conferences, seminars and workshops on the subject of equality, in particular in central and eastern Europe, and has published studies on some particularly sensitive issues. It regularly organises conferences of the European ministers responsible for equality between women and men. In recent years it has been active in promoting the **harmonisation of legislation on trafficking of human beings**, in particular women, for the purpose of sexual exploitation. Further to these efforts, the Committee of Ministers recently adopted Recommendation No. R (2000) 11 on action against trafficking in human beings. The primary need is for concerted efforts between the countries of origin of trafficking victims and the countries of destination.

THE RESULTS OF FIFTY YEARS' FUNCTIONING OF THE CONVENTION

Political impact

The ECHR is the most sophisticated and effective of all international human rights protection systems. It has served as a source of inspiration for international treaties on human rights adopted outside Europe. Yet, despite this unquestionable success, the terrible violations of human rights committed in former Yugoslavia and Chechnya seriously undermine the credibility of the Council of Europe, as an institution devoted to the human rights cause, and of the guarantees which the organisation promises. In this connection, the **President of the Parliamentary Assembly, Lord Russell-Johnston**, has expressed his regret at the apparent powerlessness of the Council of Europe. He has stated *"We ought to be much more directly active where infringements are alleged... . We have a potent but undeveloped capacity to* ***mediate*** *– or perhaps I should say* ***pre-mediate*** *– in disputes."*

Legal impact

Over the years the Convention has led to the definition of standards, which have unquestionably had a far-reaching impact on the member states' legal systems. States which have signed a convention are under an obligation to ensure that their national law is consistent with its provisions and to take any adaptation measures necessary. It is true that the judicial machinery established by the Council of Europe to promote and protect human rights constitutes the organisation's greatest endeavour, but the system is powerless in the face of serious, systematic violations of human rights, as in former Yugoslavia and Chechnya. One of the system's obvious weaknesses is the ease with which states parties may derogate from their obligations in times of emergency or make reservations in respect of provisions of the Convention. Derogations may continue for lengthy periods. However, a derogation, which is by nature an exceptional measure, should under no circumstances become permanent.
The fact that the case-law of the Court is not available in all of the languages of the states parties also poses a problem.

Strengthening the Convention system

As specified in the preamble to the Convention, the aim being pursued is not only the **"maintenance"** but also the **"further realisation"** of **human rights**. For that reason, the Council of Europe strives constantly

- to preserve the established Convention law
- extend the rights guaranteed
- make procedural improvements.

Preserving the body of Convention law

Preserving the established law of the Convention is of crucial importance to the credibility of the Council of Europe. Maintaining and further improving the quality of the Court's case-law and fostering the spread of information on the achievements of the Council of Europe with regard to the rule of law and the protection of human rights are ongoing tasks for the organisation. It is both desirable and necessary that **translations** of the established case-law should be available in the member states' own languages to make up for a lack of public information on human rights.

Extending the rights guaranteed

The Convention is regularly supplemented. One recent example is the adoption of Protocol No. 12 (see p. 11). As part of its general efforts to safeguard and promote human rights, the Council of Europe seeks to fill legal vacuums, principally in new specialist areas such as bioethics, where it became the first international organisation to establish a medical and scientific code of conduct through a framework convention. An additional protocol to that convention bans the cloning of human beings. Four more additional protocols are currently being drawn up. They aim to lay down specific rules governing organ transplantation, research on human beings, protection of the embryo and foetus, and genetics.

Procedural improvements

The number of individual petitions received by the Court is growing year after year. Steps should be taken to enable the Court to deal with its excess case-load. The system has already been rationalised by establishing a single institution – the new European Court of Human Rights. Other measures that might be envisaged include:

- simultaneous examination of the admissibility and the merits of an application at a single hearing, resulting in a single decision;
- more effective means of sanctioning states found to have committed repeated violations in a number of identical cases.

The Human Rights Commissioner

The Council of Europe's first Commissioner for Human Rights was elected and took office in October 1999. Without encroaching upon the **prerogatives of the Court or other convention bodies**, the Commissioner fulfils the role of a **non-judicial organ**, responsible for promoting education in, awareness of, proper respect for and full enjoyment of human rights, as resulting from Council of Europe instruments. There is naturally every reason for the NGOs to sustain regular, efficient relations with the Human Rights Commissioner.

Education and information about the Convention

The Council of Europe attaches considerable importance to human rights education, which plays a vital role through both the teaching of human rights themselves and the inclusion in school and university curricula of subjects raising issues related to human rights or cultural, linguistic, religious and philosophical diversity. **The Council pays particular attention to the crucial role played by the mass media in human rights education.** It recommends promoting a **culture of tolerance** and respect for the qualities and cultural values of different ethnic, cultural and religious groups. The ECRI has produced a publication on examples of **"good practices"** to combat racism and intolerance in the European media.

Action taken by the NGOs granted consultative status

For some thirty years the Human Rights NGOs enjoying consultative status with the Council of Europe have been the organisation's special partners. They are organised in their own specific "grouping", which meets four times a year on the occasion of the part-sessions of the Parliamentary Assembly.

Sculpture "The Seven Petrified" by Carl Bucher

At these meetings a representative from the **Directorate General of Human Rights** systematically reports on progress made with **signatures and ratifications of the ECHR**, the additional protocols and other similar instruments. Whenever possible, the NGOs encourage their national branches to lobby political authorities in the member states which have not yet signed or ratified these instruments.

Together, the NGOs have passed a number of motions with the aim of publicising the Convention and extending its scope to new rights. These include:

- motions on human rights education and the fight against racial prejudice in schools (1976 and 1979)
- a request for all member states to accept Article 25 of the ECHR (the right of individual petition) (1978)
- a move to add an article designed to offer improved guarantees for disadvantaged persons and groups (1978)
- a motion to allow NGOs to initiate proceedings in the interests of safeguarding human rights (1987)
- requests for an additional protocol on the right of asylum and the status of refugees (1988, 1991 and 1993)
- a preliminary draft additional protocol on the environment (1999).

At the meetings of the grouping many NGOs report on their **efforts to gather information** on breaches of human rights through investigations and judicial observation, and to make this information known by means of regular or ad hoc publications. Subjects covered in the past two years include:

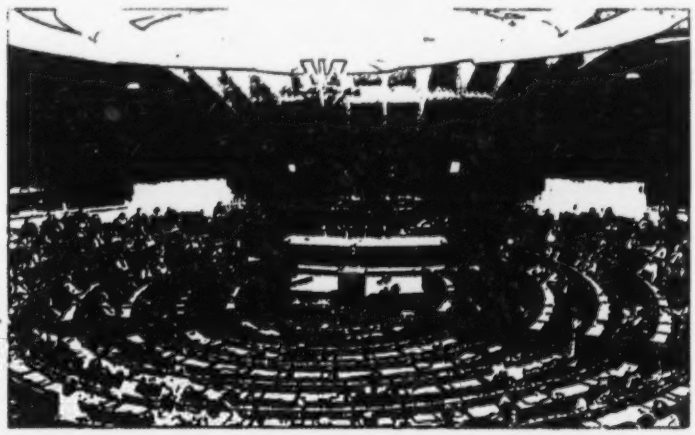
- crimes against humanity in Kosovo
- Russia and the death penalty
- the serious violations of human rights in Chechnya
- the situation in Turkey regarding rights and freedoms
- human rights in the Euro-Mediterranean partnership
- the functioning of the French judicial system in the fight against terrorism
- and the worrying implications of the reinforced anti-terrorism legislation in Northern Ireland.

The NGOs run seminars, colloquies, workshops, awareness-raising campaigns and other events relating to various aspects of the Convention, depending on each organisation's specialist or general-interest focus. Council of Europe representatives are regularly invited to speak on these occasions.

Various educational activities are also organised with the aim of improving knowledge of the Convention and its machinery. The methods used vary. They include conferences and workshops, case-studies, visits to sessions of the European Court of Human Rights – in particular for young people and schoolchildren, and even cartoons.

The NGOs believe that the Convention system would be considerably improved if it included more effective means of sanctioning states in respect of which the Court finds violations in a large number of identical cases. The NGOs are also in favour of the establishment, at national level, of institutional mechanisms to ensure systematic, regular monitoring of the compatibility of domestic law and judicial practice with the Convention.

They likewise consider that the Convention system would be more effective if the Convention was regarded as an integral component of the domestic legal order, not only in law but also in practice. For this reason, the states should endeavour to **make the Court's case-law available in their own languages**, on an equal footing with that of the national courts, and include the Convention as a subject of study on law faculty curricula, again on an equal footing with national legal disciplines.



The Assembly Chamber

On ratifying the Convention, a number of states made use of the clauses on reservations and derogations so as to avoid having to ratify all of the provisions or certain additional protocols (such as Protocol No. 6 on abolition of the death penalty). These states should be encouraged to review their reservations, which should be subject to a clearly defined time-limit, making it possible to require their lifting as soon as possible. Similarly, states which take measures derogating from their obligations under the Convention should be regularly required to justify the continuing implementation of those measures. Given its exceptional nature, a derogation should under no circumstances become permanent.

The NGOs pay particular attention to the proper functioning of the various forms and stages of the **monitoring** process. They are also seeking to define the ways in which they might work with the Commissioner for Human Rights and to envisage what roles they might play as counsellors, legal advisers or representatives of individuals wishing to lodge an application with the Court or as experts (amici curiae) on the specific issues raised in a given case.

The NGOs' critical analysis of the work done by the Council reflects a commitment to assume their contractual role of civil society representatives (under the consultative status granted to them) and their desire to take and show a growing interest in the organisation's activities.

Judges of the European Court of Human Rights

PROCEDURE GOVERNING INDIVIDUAL APPLICATIONS TO THE EUROPEAN COURT OF HUMAN RIGHTS

Applications must be sent to the Registrar (**Cour Européenne des Droits de l'Homme, B.P., F-67075 Strasbourg Cedex**). They are registered by a section of the Court and assigned to a rapporteur. The rapporteur decides whether to refer the application to a committee of three judges (including the rapporteur). This committee may decide to declare an application inadmissible; its decision, which must be unanimous, is final.

Where the rapporteur deems that the application raises a question of principle and is not inadmissible, or where the committee cannot reach a consensus on rejecting it, the application is examined by a chamber.

Chambers consist of seven judges and determine both admissibility and merits. They may also take decisions concerning their own jurisdiction to deal with the case. The rapporteur prepares the case-file and makes contact with the parties, who submit their observations in writing. The chamber then holds a hearing. It places itself at the parties' disposal to help negotiate a friendly settlement. If no friendly settlement is reached, the chamber delivers a judgment.

In exceptional cases that raise a serious question of interpretation or application of the Convention – and only in such cases – the parties may request that the case be referred to a Grand Chamber of seventeen judges. The Court's judgments, which are adopted by a majority vote, are binding on the respondent states, which are required to take any measures necessary to guarantee compliance with the Court's decisions and the rights safeguarded in the Convention.

The Court may order a state to pay compensation and costs and expenses.

The Committee of Ministers supervises the execution of the Court's judgments.

BEST COPY AVAILABLE

René Cassin – a *"pragmatic utopian"*

One of the leading figures behind the Convention

In the European Convention on Human Rights the signatory states, all members of the Council of Europe, make express reference to the Universal Declaration of Human Rights and resolve *"to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration"*. For a better understanding of the origins of the Universal Declaration and of the Convention, it is worth mentioning one of the leading figures behind these two instruments: René Cassin.

Born in Bayonne in 1887 of a father from Nice and a mother of Alsatian origin, René Cassin described himself as a *"man of three frontiers"* (the Spanish, the German and the Italian). He studied law at the university of Aix-en-Provence, where he no doubt developed his taste for justice. During the First World War he was severely wounded. He thus became aware of the plight of the disabled soldiers, war widows and orphaned children, reduced to living off begging and expedients. The fundamental injustice of this situation could only be remedied through a right to compensation. He therefore helped to found a veterans' and war widows' organisation, the *"Union Fédérale des Combattants mutilés et veuves de guerre"*, which, at René Cassin's instigation, not only lobbied for the necessary social legislation but also sought to promote lasting peace between nations.

As France's delegate to the League of Nations in Geneva, he made his deepest desire known from the outset: the League of Nations should serve to *"transpose the Declaration of Human Rights to the international order."* Despite his efforts, René Cassin could but watch with horror as dictatorships – *"terrorist states"* – slowly came to power in Europe. His experience during the 1914-18 war and the inter-war period made a lasting impression on him. His attachment to the personal nature of human rights and insistence on the need to devise an instrument capable of guaranteeing respect for those rights can be better understood in the light of that experience. It also explains why he immediately joined the Resistance alongside General de Gaulle. It was when he witnessed the atrocities committed by the Nazis – unrivalled in human history – that he began to envisage new legal concepts, such as the collective liability of the Nazi party leaders and those who had obeyed their orders and the creation of an international criminal court.

As the Second World War came to an end, the allies, horrified by its barbarity and the devastation it had caused, by the unprecedented crimes committed, acknowledged the need to outlaw war and to protect individuals against states, even their home countries. They therefore established the international Tribunal in Nuremberg, to try those who had committed crimes against humanity, and the United Nations with its Commission on Human Rights. That Commission appointed an eight-member select committee, including Eleanor Roosevelt and René Cassin, to draw up an international declaration of human rights.

René Cassin saw this as an important step towards world unification. It was Cassin who managed to get the title changed from *international* to *universal*. His influence on the drafting process and the wording of the text was enormous. He insisted, for instance, that everyone must be guaranteed the possibility of realising the *"social and cultural rights indispensable for his dignity and the free development of his personality"*.

René Cassin

Although Cassin found cause for satisfaction in the fact that *"for the first time in history an attempt has been made to couch in legal terms principles founded on the unity of the human race"*, it was with bitterness that he noted that individuals had not been granted an effective means of recourse in order to assert their rights. He feared that the UN Commission on Human Rights was but a *"Penelope weaving useless texts"*. He therefore relied on public opinion, expressed through the non-governmental organisations, and on the establishment of regional courts to remedy this shortcoming. It was therefore with joy that he welcomed the signature of the European Convention on Human Rights in Rome on 4 November 1950.

In 1968 he was awarded the Nobel peace prize. He used the prize money to found the International Institute of Human Rights, which has its seat in Strasbourg and aims to enable students from all over the world to acquire a knowledge of human rights and thus become *"different persons"*. In his address at the inauguration ceremony he stated *"Like Macbeth in his day we are obsessed with murder and the sufferings of all kinds inflicted on human beings who are persecuted and despised. But it is with hope that we look to the future: we believe that, above local and national communities, a universal community is gaining ground, in which all human beings endowed with reason and a conscience will come together."*

René Cassin died on 20 February 1976. His ashes were transferred to the Panthéon in Paris in 1987.

ARTICLE 2
The right to life and abolition of the death penalty

> 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
> a) in defence of any person from unlawful violence;
> b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
> c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 2 protects individuals from being killed arbitrarily by a state but does not ban the death penalty, where it exists under the law. For that reason an additional **Protocol (No. 6)** to the Convention was opened for signature in 1983. It provides: ***"The death penalty shall be abolished. No one shall be condemned to such penalty or executed."***

This protocol is **the first international legal instrument** to make **abolition of the death penalty a legal obligation**. To accede to the protocol states must eliminate the death penalty from their law, except in respect of acts committed in time of war or of imminent threat of war. However, NGOs and the members of the Parliamentary Assembly of the Council of Europe disagree with the exceptions provided for in Protocol No. 6. They propose that the death penalty be completely abolished, in view of the advances made in international law. For instance, the Statute of the International Criminal Court, adopted in Rome in July 1998, makes no provision for application of the death penalty, even for crimes against humanity. The United Nations Security Council moreover ruled out imposition of the death penalty for the crimes coming within the jurisdiction of the International Criminal Tribunals for the former Yugoslavia and Rwanda.

At 1 July 2000, of the 41 member states of the Council of Europe only Turkey had not signed Protocol No. 6. Albania, Poland and Russia had signed the protocol, but it had not been ratified by their parliaments. The number of death sentences carried out in Europe is steadily decreasing. However, in a 1999 report the Parliamentary Assembly's Committee on Legal Affairs and Human Rights noted with concern that, in breach of their obligations, some states (Albania, Latvia, Russia, Ukraine) still had prisoners awaiting execution.

Yet, a far greater number of other **executions take place outside the law: the political assassinations, "disappearances" and massacres** which states too often organise or tolerate.

Frequently asked questions:

- *Can it not be said that the death penalty is a deterrent?*
  Statistical studies in a number of European countries which have abolished the death penalty show that crime figures have not risen. Criminals frequently act on impulse or for emotional or ideological reasons. At the time of their offence they are not influenced by fear of being put to death.

- *A sentence of life imprisonment is often reduced to fifteen to twenty years. Is it not necessary for society to protect itself against recidivism?*
  It is true that some of the people provisionally or finally released from prison re-offend. But the number is small, and it cannot be said that there is a *"public danger"*.
- *Shouldn't those guilty of abhorrent offences be made to pay for their crimes?*
  The death penalty is a form of revenge, but executing criminals does not compensate their victims. A legal penalty must not obey the *"eye for an eye"* principle. Moreover, once a death sentence has been carried out, the person executed cannot be granted a retrial in the event of a judicial error. It is not possible to deprive a human being of all possibility of making amends. The prison system must encourage offenders to make themselves useful to society and to victims.
- *Doesn't abolition of the death penalty weaken the authority of the state and the judiciary?*
  An execution is not a shining example of good use of state authority. On the contrary, states which yield to pro-execution logic lose their moral greatness.

Reasons for vigilance and possible action

- When there is an outbreak of particularly abhorrent crime, a majority of the public may be for restoring the death penalty. Members of the community must **remain vigilant** and draw their parliamentary representatives' attention to the risks of a possible revision of the law, which would be a retrograde step.
- Where states carry out executions in breach of their commitments, NGOs can conduct a **postal, fax or e-mail campaign**, demanding that they honour their obligations.
- **NGOs** may also bring **pressure** to bear – by all appropriate democratic means – to ensure that new member states of the Council of Europe **sign Protocol No. 6** immediately upon their accession and subsequently ratify it.

ARTICLE 3
Prohibition of torture

> No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Half of the countries in the world still use torture. Torture is the intentional infliction of **intense suffering, whether immediate or long-term**. Torture may result in bodily harm or be *"clean"* and leave no trace. Article 3 prohibits the infliction of physical or mental suffering. Unlike the United Nations Convention against Torture it does not contain a precise definition of torture. In its case-law relating to this article, the European Court of Human Rights has held that:

- being made to stand against a wall, exposed to excessive noise and deprived of sleep and food while in police custody constitutes **inhuman treatment** (Ireland v. the United Kingdom, 1978)
- the risk of being exposed to torture or inhuman treatment after being expelled from a country may cause physical suffering (Cruz Varas and Others v. Sweden, 1991) as may conditions of detention in a psychiatric hospital (Herczegfalvy v. Austria, 1992)
- being beaten and raped with a truncheon while in police custody amounts to torture (Selmouni v. France, 1999).
  After the Court had given judgment the respondent states were obliged, depending on the circumstances, to change their procedure for questioning suspects, amend their law and/or compensate the victims.

The European Committee for the Prevention of Torture (CPT)

In line with the logic of Article 3 of the Convention, to afford persons being detained greater protection against torture and ill treatment, in 1989 the member states of the Council of Europe set up the European Committee for the Prevention of Torture, a non-judicial body established under the **European Convention for the Prevention of Torture**. This committee of independent experts may at any time inspect places of detention in the 41 member states of the Council of Europe, which have a total of two million detainees. In ten years it has made 75 such visits, which the victims of ill treatment have welcomed as a very positive step. If permitted to do so by the government concerned, the committee may publish its reports on visits, containing recommendations on improving the situation of prisoners. The public authorities (ministries, police forces and prison administrations) are often poorly informed about the work of the CPT and sometimes even unaware of its existence.
The CPT is the **only body of its kind** at an international level, and opening the European Convention for the Prevention of Torture for signature by states not members of the Council of Europe is therefore being considered. This convention has been signed and ratified by all of the organisation's 41 member states – a record!

Torture must always be proscribed

- Use of torture is absolutely forbidden by the international community. It is one of the few prohibitions that suffers no exception.
- Initially, good excuses can always be found for torture. It may begin with a known terrorist, from whom information or a confession must be obtained, but later moves on to mere suspects, followed by their friends and family. It is a sort of escalation process.
- Torture is always evil. Those who are tortured are damaged beyond repair. Those who have carried out torture, even only once, often feel shocked, distressed and disgusted. Those who use torture as a matter of routine are degraded.

Action and vigilance
What role do the NGOs play?

- After verifying reports of torture or ill treatment, the NGOs appeal to the public to write *en masse* to the government concerned, calling it to account. By showing that specific cases of abuse are no longer a secret abroad and denouncing them, the NGOs help to embarrass the government concerned in its international, diplomatic and trade relations.
- The NGOs help victims to file an application with the Court of Human Rights.
- The NGOs provide information on the situation in places of detention to the CPT. They have an important role in following up recommendations made by the Committee in its visit reports, as many states fail to heed those recommendations.
- The NGOs make the work of the CPT known to the general public. They may pressurise a government to allow the publication of a visit report.
- The NGOs show the authorities (police, justice, the army and prison authorities) that citizens are keeping a watchful eye on the way in which they uphold human rights. They dialogue and think things over with members of these institutions.
- The NGOs seek to raise young people's awareness of these issues.

How effective is this action?

Some people are released, while others' conditions of detention are improved. Progress of this kind is more often than not the result of joint action by a number of NGOs. Former detainees and their families insist that this type of action must continue.

ARTICLE 5
The right to liberty and security (extracts)

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforce able right to compensation.

Article 6

The right to a fair trial (extracts)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights: ...

Article 5, which deals with the right to liberty and security, and Article 6, which guarantees the right to a fair trial, are closely linked. Deprivation of liberty is acceptable, for instance, where it is the outcome of a fair trial. Article 5 lists the grounds on which a state is permitted to detain an individual; Article 6 specifies the individual's rights, essential to a fair trial. Most of the applications to the European Court of Human Rights are based on these two articles. Their interest lies in the concept of human rights implicit in them, which the Court has described as striking a fair balance between defending institutions and democracy in the public interest and safeguarding individual rights. Liberty and security of person are indeed essential human rights. Security of person can be construed as freedom from arbitrary arrest or detention. The Court has held that an individual cannot waive this right. Article 1 of Protocol No. 4 states that persons must not be deprived of their liberty merely on the ground of their inability *"to fulfil a contractual obligation"*, that is to say to pay debts other than those imposed by law. However, under Article 5 liberty and security of person may be curtailed in certain circumstances, which are listed in full and on which the Court has placed a narrow interpretation. Overall, these are cases where detention is in accordance with the law, subject to the proviso that the law must not contain provisions contravening the Convention. Under the case-law the lawfulness of detention must be verified periodically, and any person arrested must be brought before a judge immediately and be tried within a reasonable time.

This reasonable time requirement also exists under Article 6, paragraph 1, which states that everyone is entitled to a *"fair and public hearing within a reasonable time"*.
This article, which is also of vital importance, relates to both criminal and civil proceedings, a fact which people tend to overlook.

In the light of these comments, it can be seen that Articles 5 and 6 of the Convention constitute the cornerstone of the human rights protection system. Article 5 secures the right to individual freedom in the physical sense, and Article 6 guarantees the right to justice in the moral sense.

ARTICLE 8
The right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

A major social and cultural change in the perception of *"privacy"* is currently taking place. People demand that third parties no longer encroach upon their personal, private affairs. At the same time they assert their right to *"individual fulfilment"* or the right to *"develop relations with others"* as they see fit, free from any interference.
Neither the Convention nor the Court of Human Rights gives a definition of *"private life"*, which remains a hazy legal concept. Besides, Article 8 is mainly concerned with protection against arbitrary interference by public authorities. Nevertheless, under the Court's case-law states have a growing number of material obligations to protect people's private and family lives. For instance, they are required to take practical steps guaranteeing the enjoyment of this right and also to protect individuals' privacy from interference by others, for instance by the media.

According to the case-law the right to a private life includes the right to a social life (the right to develop relations with others and to carry on an occupation), the right to protection from physical and mental harm, protection of a person's name, protection in matters of collection and distribution of personal data, and the right to a sexual life (freedom of choice in sexual matters, protection against sexual violence, freedom to choose one's sexual identity) within the limits imposed by the protection of other people's rights and freedoms.
Under the precedents set by the Court the right to a family life may encompass the right for a family to live together and for its members to visit one another; parents' rights to custody of their children; rights of succession; and the right not to be discriminated against on grounds of illegitimacy or adoption. Inviolability of the home extends to individuals' homes, places of business and private property within the home.

Lastly, Article 8 includes the right to respect for correspondence: protection against interception of correspondence and telephone conversations; protection against surveillance of correspondence; and prisoners' right to be permitted to send and receive correspondence. However, as can be seen from paragraph 2 of Article 8, the above-mentioned rights are neither absolute nor unlimited. One of the main problems that arises is reconciling the requirements of Article 8 with those of Article 10 on freedom of information. On one hand, people

do not want the press to serve up details of their private lives to the public. On the other hand, many people are partial to learning such details about others. Some sections of the media therefore seek to publish this kind of news because it will boost their readership; huge commercial interests are at stake. It is of course necessary to safeguard citizens' right to information about certain confidential matters concerning public figures, of relevance to their social or political responsibilities. Yet there must be no confusing the interests of democracy with curiosity. Most of the scandals concerning people's private lives have nothing to do with citizens' right to information or with the public interest – only the economic interests of those publishing the information are involved. The aim of freedom of expression and the right to information is not to further the economic interests of the gutter press.

Possible fields of action for NGOs in this field include:

- All child welfare associations, parents' associations, movements for the abolition of prostitution or against sexual violence, and associations seeking recognition of the rights of sexual minorities.
- Professional organisations in the media sector, which have estab lished codes of ethics and self-regulation, in particular with regard to privacy. These codes must have public backing, as they may be at risk of being undermined by huge economic pressures.
- Lastly, many NGOs carry on activities aimed at inculcating a responsible attitude in the general public regarding use of the media. Respect for everyone's privacy will be greater if the public as a whole refuses to buy, listen to or watch certain media products.

Article 9
Freedom of thought, conscience and religion

> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance.
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are neces sary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9 is one of the most important in the Convention. It is part of a series of articles that deal with the essence of people's private lives. Alongside respect for private and family life (Art. 8), freedom of expression (Art. 10), freedom of assembly and of association (Art. 11) and the right to marry (Art. 12), Article 9 protects **individuals' freedom of thought, conscience and religion.**

The term *"religion"* may cause confusion. In fact, it is all beliefs, convictions and conceptions of life which are protected. This broader concept is also reflected in the case-law on this article.

The article safeguards a number of rights: freedom of thought (and therefore freedom to think), freedom of conscience and the freedom to have or change a religion or conviction and to manifest it in public in various ways. The only possible restrictions relate to public order, health, safety, morals and the rights and freedoms of others.

One criticism which can be made of the article is that it does not expressly afford protection to the non-religious, agnostics or atheists: in other words to those who may wish to assert a **right not to belong to a religion** and not to manifest their beliefs in public.

Problems of conscience may be encountered in countries with a state religion or church or in countries where a given religion dominates politics and day-to-day life (clericalism).

ARTICLE 10
Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

"A grey press, censored by men in grey sitting in grey buildings" – this is how the state of the media was described in the Czech Republic under the communist regime.

Why is it a common feature of all totalitarian states that they closely control all forms of freedom of expression, especially in the press? Conversely, why has access to free media hastened the collapse of totalitarian states or at least fostered internal resistance?

The reason is that **freedom of expression and opinion is vital to democracy**. How can citizens fulfil their responsibilities in full knowledge of the facts if they are not kept properly informed? And how can people form opinions without being able to compare their ideas with those of others?

This shows the importance of Article 10, which secures not only the right to freedom of opinion but also the right to freedom of expression and of debate.

In its case-law the Court has consistently required that any restrictions of these rights be kept within narrow limits. It systematically ensures that restrictions on freedom of expression are *"provided for by law"*, necessary and proportionate to the aim pursued (in other words that no alternative measure might have been taken) and that the alleged ground for a restriction is based on an overriding public interest, really taking precedence over another public interest – that of being informed.

Through its authoritative decisions the Court has permitted considerable progress to be made in the Convention law. The text of the Convention itself only refers to freedom to receive and impart information. The case-law goes further and talks of a public right to information. Other Council of Europe texts point in the same direction. They encourage public authorities actively to help the media assume their **role of informing the public**. The media are thus not regarded solely as businesses like any other, only concerned with making a profit from what they publish, but are considered to have responsibilities as suppliers of information. This means, for example, that public authorities must ensure that there is genuine **pluralism of the media**. Going even further, whereas the media increasingly involve huge commercial stakes, it is for public authorities to enable different social groups and trends of opinion to make themselves heard despite a lack of financial resources. In this respect, it is a cause for regret that the current texts still pay far too little attention to voluntary sector media (press and radio).

The NGOs carry on a range of **activities** in this field.

Three examples are:

1) Close monitoring of all situations in which freedom of the press is under threat – the NGOs concerned denounce any infringements and take up the cause of journalists subject to harassment.

2) Various support and training measures for the media in central and eastern Europe.

3) A specialist NGOs' working group deals with the relationship between education and the media (for instance, how the new information technologies can be used to help people with disabilities); another is devoted to *"media and human rights"*, covering issues such as promotion of democratic citizenship by the media and media observance of the rules of democracy.

ARTICLE 11
Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and free doms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

Association, club, choir, orchestra, society, trade union, group, fellowship, guild, trust, holding company, coalition, marriage, community, brotherhood or sisterhood, congregation, co-operative, corporation, convention, confederation, harmony, front, clique, gang, party, cartel, circle, league, alliance, band, lodge, committee, team, squad, college, lobby, commission, phalanstery, order, corps ...

The vocabulary is rich, but it merely reflects the diversity of the social organisations formed by groups of people.
Three friends had a shared hobby. They therefore decided to set up an association. There is a saying in Europe that, whenever three people come together, the first thing they do is to found an association – with a president, a secretary and a treasurer. This behaviour is typical of many Europeans, and that is a good thing. If the people concerned were told that, by acting in this way, they are asserting one of the fundamental rights of European citizens, they would be very surprised.

However, our three friends encountered problems with people around them. They therefore used their association to defend their common interests. Soon they were joined by others. They asserted their right to freedom of association. But is that freedom unlimited? Of course not. It has proved necessary to place lawful restrictions on it. Public order – like democracy – is a term which takes on different shades of meaning, depending on an individual's culture or a state's structure. It would be desirable for the text to specify that independent courts should review the lawfulness of restrictions imposed by the armed forces, the police or the state administration, even though other articles would seem to make this an implicit requirement.

If an association was to seek to encourage public drunkenness and refusal to obey the law, it could naturally be banned under the second paragraph of Article 11. But there is indeed a need for vigilance and for the means of recourse provided for. The Convention must be put into practice as a living instrument.
The largest, most active associations in Europe are the trade unions, which have hundreds of millions of members. The world of work is a vast area of rights and freedoms.

Today

It has to be said that, although the existence of trade unions is not challenged, their activity in defence of the interests of individuals is constantly being called into question. Judicial involvement in the settlement of labour disputes is an increasingly frequent phenomenon. In many instances this amounts to a breach of Article 11. It is clearly a case of misinterpretation.

What applies to the trade unions is just as true in the case of associations seeking to defend individuals' rights and freedoms.

The public authorities do not openly take action against associations, and this is one of the primary results of the binding force of the Convention. The authorities' preferred targets are the individuals who are active within and on behalf of organisations. The protection afforded to those individuals must be a sufficient deterrent to ensure that they are fully free to carry on their activities.

It must be possible to protect campaigners for human rights, and also the legal specialists and journalists who support their cause, so they can continue defending rights and freedoms. This absolutely essential need should be given recognition in the Convention through the addition of a specific clause to the existing text.

Article 14

In 1950, scarcely five years after the terrible discovery of the death camps, the genocide of the Jews and the Roma, the elimination of the mentally ill, the persecution of trade unionists, socialists, communists and freemasons (beginning with the Germans themselves), the member states adopted Article 14 of the Convention, which reads:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

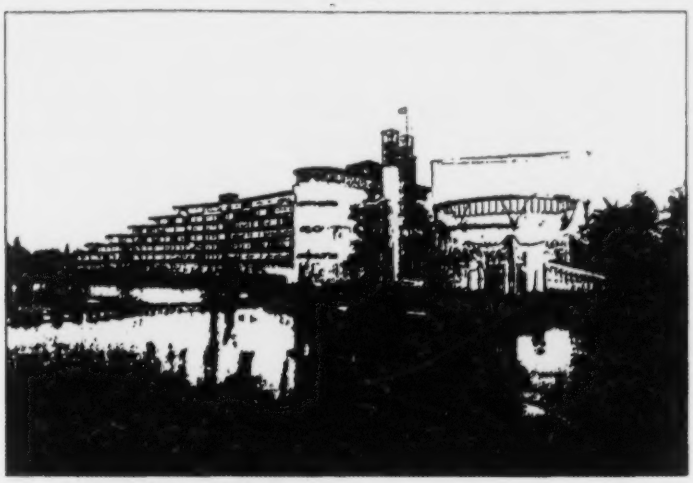
Fifty years later, although the vast majority of Europeans effectively enjoy the rights and freedoms enshrined in the 1950 Convention, the ethnic cleansing carried out in Bosnia and Herzegovina and in Kosovo is a very recent event; peace between catholics and protestants in Ireland is proving very difficult to achieve; ethnic minorities such as the Roma are still oppressed; Blacks, Roma, North Africans and Irish people are still killed on account of who they are; Turkish homes are put to the flame; Jewish tombs are profaned; political parties which claim to draw their inspiration from fascism are gaining ground, because their ideas are making headway in public opinion; little girls from immigrant backgrounds are subjected to genital mutilation; women see their careers stunted, are beaten or, worse, are forced into prostitution; people are banned from jobs, housing or places of leisure merely on account of the sound of their name or the way they look; new forms of poverty are emerging in Europe, and the poor swell the ranks of those excluded from society. How can men and women who do not have enough to eat enjoy fundamental freedoms?

And yet, what progress has been made in fifty years!

Most European states have promulgated laws which punish xenophobia, anti-Semitism, racism, sexism and other forms of segregation. The Court ensures that these laws are properly applied.

NGOs are able to lodge claims for damages and defend the victims of these offences in criminal proceedings. They also do not hesitate to take action for the promotion of gender equality in matters of employment, remuneration, promotion and access to senior posts in business, the civil service or politics.

Schools and the NGOs concerned with education seek to establish conditions conducive to combating racism in the educational system and encourage positive attitudes towards foreigners and those who are different.



European Court of Human Rights, Strasbourg

Activities:

- Pupils in Middelburg in the Netherlands have established a *"racism free school"*.
- In what is known as the *"Tottenham experiment"*, the British police give people brought in for questioning a leaflet informing them of their rights.
- Turkish women in Germany have organised a *"procession for tolerance"* from Mölln to Lübeck.
- A Roma association in Spain has published a book entitled *"Vamos a reírnos muy en serio del racismo"* (A serious laugh about racism).
- With European Union backing, seventeen NGOs from thirteen European countries have launched a CD-Rom entitled *"Together against racism, for a Europe of solidarity"*, which has been translated into seven languages.
- The Council of Europe has published an *"Education pack: ideas, resources, methods and activities for informal intercultural education with young people and adults"*.

However, too many states are still reluctant to prosecute and convict the perpetrators of racist offences and to apply their own legislation. Too many members of the public remain passive when they are the witness, or even the victim, of segregation or racist or sexual violence.

The Council of Europe, the European Court of Human Rights, the European Commission against Racism and Intolerance (ECRI) and the NGOs must therefore continue and intensify their efforts. It is for the NGOs to bring pressure to bear on governments so that they sign and ratify the new Protocol No. 12 to the Convention, which institutes a general ban on discrimination.

Conclusion: vigilance – persuasion – action

The authors of this publication, who are all NGO representatives at the Council of Europe, have attempted to give a picture of the Council and of the functioning of the European Convention on Human Rights, its greatest achievement. It should have become clear that, over the fifty years for which it has been implemented, the Convention has proved to be the most effective international legal instrument world-wide when it comes to protecting the fundamental rights of individuals. The Convention has evolved as a result of the interpretations placed on its provisions by the European Commission and European Court of Human Rights in their case-law. This case-law has become a source of inspiration for legislation in the countries of Europe – above all central and eastern Europe – laying the foundations for ethical policies.

The NGOs have played a fundamental role in raising awareness and promoting knowledge of human rights, in particular in the new democracies. Given their experience in such matters, they would welcome the opportunity for a greater number and variety of NGOs to participate on a more regular, more formal basis in the work of the Council of Europe's committees of experts, above all in their standard-setting activities.

The NGOs granted consultative status with the Council of Europe have learned that co-operation is essential if progress is to be made, and that activities must not only focus on particular sectors but must also be cross-sectoral. Two recent initiatives show the success of this approach: the NGOs have issued a joint declaration addressed to the European Union, which they want to have integrated into the EU Charter of Fundamental Rights. The NGOs also prepared a joint paper for the United Nations World Summit for Social Development (Copenhagen + 5), which was considered to be one of the best prepared documents and from which the European Union has taken two proposals.

But the NGOs do not confine themselves to writing documents. They seek to mobilise all human beings, since it is for each one of us to:

- remain **vigilant** in enforcing respect for fundamental rights
- dare to use **persuasion** on those who violate those rights
- take bold, concerted **action** to defend such rights.

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Council of Europe and NGO websites

Council of Europe general site
http://www.coe.int

European Court of Human Rights
http://www.echr.coe.int

Council of Europe Human Rights Web (home page)
http://www.dhdirhr.coe.int

European Commission against Racism and Intolerance
http://www.ecri.coe.int

European Committee for the Prevention of Torture
http://www.cpt.coe.int

State of signatures and ratifications of conventions
http://conventions.coe.int

NGOs
http://www.ngo.coe.int

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European Court of Human Rights
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Abbreviations

CDDH	**Steering Committee for Human Rights**
CDEG	**Steering Committee for Equality between Women and Men**
ECHR	**European Convention on Human Rights**
CPT	**European Committee for the Prevention of Torture**
Court	**European Court of Human Rights**
ECRI	**European Commission against Racism and Intolerance**
NGO	**Non-governmental organisation**